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Possible future work in Public-Private Partnerships (PPPs)

Report of the UNCITRAL colloquium on PPPs (Vienna, 3-4 March 2014)

Note by the Secretariat

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I. Introduction

1. At its forty-sixth session in 2013, the Commission considered the report of an earlier Colloquium on possible future work in PPPs, held from 2-3 May 2013. Recognizing the key importance of PPPs to infrastructure and development, the Commission requested further preparatory work to define a clear mandate before deciding whether to task a Working Group with work on PPPs.[1] Accordingly, the Commission agreed that a second Colloquium should be held, and its results presented to the Commission at its forty-seventh session.[2]

2. The resultant Colloquium was held in Vienna, from 3 to 4 March 2014. It brought together experts from government, intergovernmental and international non-governmental organizations, private sector and academia. The Colloquium discussed whether legislative work on PPPs was timely and feasible, the scope of any future legislative text on PPPs, and key technical issues.

3. The Colloquium based its deliberations on a Discussion Paper (documents A/CN.9/819 and A/CN.9/820), background material and presentations made at the Colloquium itself, available at www.uncitral.org/uncitral/en/commission/colloquia/public-private-partnerships-2014.html.

II. The importance of enabling effective PPPs (A/CN.9/820, paras. 71-75)

4. The Colloquium endorsed the conclusions of the Commission and other bodies, reported in the Discussion Paper, that effective and efficient PPPs would be crucial for sustainable economic and social development. It underscored the significant and widening gap between infrastructure needs and public funds available to meet them (the infrastructure funding gap), cited as $40bn annually for Africa and substantially more for South-East Asia. It was observed that annual infrastructure investment needs until 2020 exceeded $750 billion in Asia and the Pacific alone.[3] Consequently, it noted, an increasing potential for PPPs to finance such investment.

5. The Colloquium agreed that a main issue for consideration was the potential contribution of an UNCITRAL legislative text to enabling effective PPPs, noting that donor agencies including the multilateral development banks (MDBs) and other United Nations and regional bodies were already advising on the use of PPPs and designing relevant projects.

III. Preparatory studies and consultations prior to the Colloquium (A/CN.9/819, paras. 10-23)

6. The Colloquium noted that the Secretariat, experts and consultants had conducted extensive surveys of existing PPP laws to identify the main topics that

[1] Report of the Commission, A/68/17, paras. 327, 330-331.
[2] Ibid., para. 331.
[3] ADB-ADBI study, Infrastructure for a Seamless Asia.

any future legislative text should contain, by reference to the extent to which those laws (a) reflected the main topics in the three texts comprising the UNCITRAL PFIPs Instruments[4] and (b) included novel approaches.

7. The Colloquium heard a detailed presentation on the surveys. The Colloquium took note of the methodology applied and findings in the consultants' report,[5] also summarized in paragraphs 15-18 of document A/CN.9/819.

8. The laws of the 58 States surveyed were estimated to cover up to 80 per cent of PPP laws worldwide. The sample was considered representative as the States concerned had been selected from all regions, with varying levels of economic development and different legal traditions. The surveys analysed the general legislative and institutional framework, project risks and government support, selection of the private party, construction and operation of the facility, duration, extension and termination of the project agreement, and settlement of disputes. They assessed the extent of compliance with each of the thematic areas in the PFIPs Instruments.

9. Most PPP laws surveyed reflected the main topics of the Legislative Guide, but 42 per cent of States did not meet the Legislative Recommendations overall. The approaches to implementing these Recommendations varied significantly. Compliance gaps were more frequently observed in the regulatory framework and contractual provisions, rather than in selection procedures. The lowest level of compliance was found in dispute resolution (Chapter VI of the Legislative Guide).

10. On the other hand, it was also noted that an analysis by the European Bank for Reconstruction and Development ("EBRD") of PPPs laws in its countries of operation had found that the provisions on dispute resolution demonstrated the highest compliance with the PFIPs Instruments.

11. Procedures and other regulatory standards in some jurisdictions addressed some topics that were missing in the primary law. Overall, the survey found no significant regional variation in the scope of national laws, though it was acknowledged that some jurisdictions with mature PPPs regimes had not been included in the surveys (including the United Kingdom of Great Britain and Northern Ireland).The findings also identified topics that were not addressed in the PFIPs Instruments at all, or that featured in the Legislative Guide only (the "gap elements"). Examples of legislative provisions on some gap elements in national laws were provided.

12. Participants shared relevant developments from their experience. It was reported that, in Australia and the United Kingdom, emerging forms of funding mechanism and risk distribution were changing the governance and structure of PPPs including selection methods.

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[4] The UNCITRAL Legislative Guide (with Legislative Recommendations) and its Model Legislative Provisions on PFIP, available at www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.

[5] Available at www.uncitral.org/uncitral/en/commission/colloquia/public-private-partnerships-2014.html.

13. Other main conclusions from the studies, consultations and additional issues reported to the Colloquium were that:

(a) The use of PPPs was increasing in developing countries and PPP laws were being introduced in States at all levels of development;

(b) Existing PPP laws varied in scope and quality;

(c) PPP laws passed after 2009 were more comprehensive and addressed more elements of the Legislative Guide than earlier texts. They contained novel approaches, especially on governance and planning. Earlier texts had generally focussed on the procurement aspects of PPPs, which was noted to be insufficient;

(d) In some cases, legislative gaps were being met by stringent administrative approval requirements (using committees and ex-ante reviews), indicating a possible lack of confidence in some public authorities and their advisers. Without a robust institutional framework in such a situation, it was noted, there would be serious obstacles to effective PPPs;

(e) Relatively frequent updating of national PPP laws, to address deficiencies in earlier legislation, was found;

(f) An emerging convergence of policy solutions for some aspects of PPPs could be seen, including for topics previously not considered amenable to legislative treatment, and reflecting an increasing maturity in some PPP markets and market developments;

(g) However, many jurisdictions were struggling to enact effective PPP laws and were designing solutions from scratch, in the absence of a clear and coherent model upon which to base national legislation.

14. Concluding that gaps and wide variations in the overall scope of PPPs laws remained, the Colloquium agreed that a new UNCITRAL legislative text on PPPs was necessary, and would be timely. Noting that the studies and reports demonstrated that the starting-point for such a legislative text should be the PFIPs Instruments (as further elaborated in Section IV below), it recommended that the three texts concerned should, at a minimum, be consolidated for ease of use. Further, as such a text was demonstrably needed in a relatively short time frame, the scope of work that should be undertaken should be carefully considered.

15. It was emphasised that a legislative text would not replace the need for further guidance, sector-specific codes, standards and other tools that would support the effective implementation and use of a PPPs law.

16. It was also agreed that some States that had not been surveyed (such as China, South Africa and the United Kingdom) would have significant experience and/or well-established legislation that could and should inform UNCITRAL's work. Further, the work of other bodies that were researching obstacles to effective PPPs (such as why there was limited interest in bidding for PPPs) should be taken into account.

IV. Main issues for any future legislative work on PPPs

17. The Colloquium noted that the consultations and studies had identified a series of key issues necessary to be addressed in a legislative text on PPPs. The Colloquium considered those issues sequentially, as reported below, and concluded a combination of updating the PFIPs Instruments, providing more detail than in current provisions and introducing new provisions would be needed.

A. Scope of any future legislative text on PPPs (A/CN.9/819, paras. 24-42)

18. The Colloquium recognised two key issues as regards the scope of a legislative text on PPPs: (1) which projects should be considered as PPPs, and (2) whether all such projects should be regulated. It was also recalled that the scope of a legislative text should be clear, so that the Commission would be able to assess the resource implications concerned.

1. Which projects should be considered as PPPs?

19. The Colloquium recalled that PPPs were now generally recognized as a legal concept, but that no universal definition of PPPs existed. However, it was agreed that a project must include certain features to be classified as a PPP, including: the selection by a public authority of a private party to construct, renovate, maintain and/or to operate infrastructure, and/or to provide services, and a long-term contractual relationship between those parties. Some participants also considered that all these elements should be present. PPPs, it was added, involved substantial private investment in the project, and required the private party to take on at least some, and perhaps a substantial part, of the risks of the project.

20. It was agreed that the term PPPs was in practice used to refer to many forms of project, including:

(a) Projects involving the construction of infrastructure with provision of services, including maintenance and operation of a facility, and services to the public (end users), also termed social services or services of general interest;

(b) Projects involving the construction of infrastructure with provision of limited services such as maintenance and operation of a facility; and

(c) Services-only projects (sometimes termed outsourcing contracts), without infrastructure construction, which could include maintenance, operation and general interest or public services.

21. Two mechanisms for payment of the private party were noted, i.e.:

(a) PPPs in which the private party is paid directly by the public authority ("PFI-PPPs"); and

(b) PPPs in which the private party is paid through levying charges on users ("concession PPPs").

It was noted that PPP projects could combine both payment mechanisms.

22. The term "infrastructure plus service PPPs" was used to describe PPPs of the type described in paras. 20(a) and (b) above, as in both types, the private sector delivered public services to end users. Concessions for such infrastructure plus service PPPs were traditionally considered the most common form of PPP. However, in examples of PFI-PPP projects in Australia, France and the United Kingdom since 2004, the private party constructed a facility (providing the finance for so doing) and subsequently maintained (and perhaps operated) the facility. This approach, it was said, was particularly the case for hospitals, schools, prisons and other public buildings or in what was called the "non-merchant" sector, though it could also be used for non-profit projects such as transport and housing. In such projects, availability payments and fees for the services provided were paid at the time of delivery throughout the duration of the contract, and by the public authority concerned rather than by end users. The public services that a facility was constructed to provide — such as clinical services, or educational services — were provided by the public authority, and not by the private party. It was noted that enabling contracts for the provision of these non-merchant services would not require significant modification to the PFIPs Instruments.

23. This latter project type was said to be dominant in many jurisdictions. However, it was observed that it did not transfer commercial risk to the service-provider, and views accordingly differed as to whether these projects were in fact PPPs. Other project types — such as design and build contracts, and refurbishment contracts without ongoing service provision — were not considered to be PPPs but public procurement contracts. Nonetheless, it was noted that many national PPP laws included provision for such projects, in part because they could not be undertaken using traditional public procurement laws. Privatizations were also noted not to be PPPs.

24. Service-only projects for the private provision of social services and management contracts could be found in Australia, for example, without the construction or operation of physical infrastructure. Here also, views differed as to whether these projects were in fact PPPs, and whether they could be undertaken using traditional public procurement laws.

25. Other forms of PPP described, which had increased in prominence since the issue of the PFIPs Instruments, included institutional PPPs (iPPPs), i.e. PPPs operated through a joint venture between the public authority and private service-providers, and PPP structures in which the private shareholder was a State-owned enterprise (SOE). An increasing number of national laws also provided for these PPPs, it was observed, which had the common feature of a public interest in the private party.

26. It was agreed that the existence of these newer forms of PPP required the revision of the PFIPs Instruments, both to extend the types of projects addressed, and to update the guidance on the projects themselves. It was reported, in this regard, that the Legislative Guide was being applied in practice to projects that it was not designed to cover, and that a new text could address this problem.

2. Which projects could and should be regulated in a legislative text on PPPs?

27. It was agreed that a legislative text on PPPs should include those based on the minimum features of a PPP described in paragraph 19 above, without providing a

definition per se. That is, a text would most usefully address projects for the design, construction, renovation and finance of infrastructure, with the provision of associated services (both maintenance-type and public services), whether the payment for the services was derived from the public authority, from end users or from a combination of the two. For the purposes of this report, such PPPs are termed "core PPPs". It was noted that this approach would enable a future legislative text to be largely based on the PFIPs Instruments. It was emphasized that these forms of projects would be the main ones needed to address the infrastructure gap referred to in paragraph 4 above.

28. It was also agreed that other forms of PPP that could be integrated within core PPPs without substantial additional work would also be addressed. Otherwise, these non-core PPPs would be put aside for possible additional future work. For two examples considered during the Colloquium, see Sections B.4 and B.5 below.

29. The Colloquium also confirmed earlier recommendations that natural resource concessions (for example, those in the oil and gas and mining sectors) and agriculture concessions should be excluded from an UNCITRAL legislative text. Such concessions would not involve service provision and risk transfer, and would involve sector-specific issues. In addition, many such projects were already the subject of significant existing international guidance, it was said.

30. The Colloquium also recommended that the proposed legislative text should address the following forms of core PPPs:

(a) PPPs involving the provision of maintenance-type services only. Key concerns included that the discipline of periodic or market adjustment that would be found in a concession would be absent in these projects, which were publicly-funded. In the context of a contract term of perhaps 25 years, sound preparation studies including assessments of value for money, a public sector comparator and affordability would be critical, especially where minimum payments were guaranteed by the State. In this regard, the example of Brazil (which had established a fund for such guarantees) was cited. Further, it would be necessary to adapt regulations for small- and medium-sized projects common in this type of PPP, such as through the issue of standardized documents and streamlined procedures;

(b) iPPPs. Key concerns here included the need for regulations on the public interest in the private party and the selection of the private shareholder in the joint venture (which would be the beneficiary of the project), to address governance risks (such as conflicts of interest and corruption), and risks to transparency and competition. The governance risks would be particularly acute where there was a majority public interest in a bidder, with a public authority commissioning the services, as there would be no genuine competition and a conflict of interest, it was observed. Particular concerns had arisen in some States with a high proportion of SOEs, where such iPPPs had been used to bypass PPPs regulations.

31. Other emerging challenges in all forms of PPPs included adapting contracts to changing market conditions and changes in the regulatory and socioeconomic landscape, innovative ways of providing services (prompted by the abolition of government monopolies or emerging service needs, for example), encouraging competition in bidding, and securing the continuing provision of services. These issues would require more targeted guidance on concluding effective global and

long-term contracts than currently available. Here, it was emphasized that existing laws were generally not adequate to adapt contracts to changing conditions.

32. It was added that these issues would require mainly adaptation and extension of the PFIPs Instruments, rather than the design of completely new concepts. Revisions to the PFIPs Instruments could also draw on existing good-quality regulations and experience at the national level; examples for iPPPs included provisions limiting the public interest in a joint venture to a minority shareholding (an example of 20 per cent was cited), and requirements for transparent selection procedures in the selection of the private shareholder, drawing on those for the award of a project.

33. Although some PPPs might fall within the scope of existing public procurement and/or concessions laws, it was considered that those laws did not address all relevant aspects of PPPs. Accordingly, guidance should recommend a coherent legislative framework, requiring the same standards of governance, integrity and procedures designed to achieve value for money and the effective provision of infrastructure and services for all projects. Thus, for example, existing concessions laws could be incorporated into a broader legislative framework to enable PPPs.

B. Key topics for inclusion in a legislative text

34. The following sections of this report set out the main technical issues that the Colloquium considered were not adequately provided for in the existing PFIPs Instruments. The Colloquium emphasized that these reflected the main such issues, and were not intended to provide an exhaustive list of topics for consideration in the development of a legislative text on PPPs.

1. Institutional framework (A/CN.9/819, paras. 43-52)

35. The importance of a robust institutional framework to support the entire PPP life-cycle was emphasized. A "PPP Unit" was commonly found at the national level, but there were very few examples of sufficiently comprehensive frameworks outside the most highly-developed States. Elsewhere, bidders' due diligence of the national frameworks often encouraged them not to bid, or only weak bidders to bid, it was said.

36. It was added that the need for a better institutional framework was particularly acute in concession PPPs, which were qualitatively different from the PFI-PPPs that could draw on long-standing public procurement experience. Key needs for capacity-development included: long-term contract design and management; addressing changes in regulation, the political situation and public payment capacity, and changes to the contract such as in the scope of services; addressing issues of custom law, tax law, land use, expropriation, and issues affecting service delivery and environmental impact. The involvement of several line Ministries in each project could be anticipated, many of which would need to be educated about PPPs as a new technique.

37. It was added that the institution would need to provide a "pipeline" of forthcoming projects. The pipeline would need to be well-understood both

domestically and internationally if bidders of suitable quality were to be attracted. In addition, the institution should develop tools for monitoring the design and implementation of projects.

38. The potential for conflicts of interest to arise if the institution were tasked with both operational and monitoring functions was raised. UNCITRAL's work on public procurement agencies (in the Guide to Enactment of its Model Law on Public Procurement) could be adapted to provide general protection against such conflicts of interest, it was said.

39. The importance of a central institution, with access to the highest authority and the capacity to lead Ministries, was underscored. It was also considered that regional and local institutions would be critical to ensure that the capacity of the sub-sovereign market for PPPs and associated services was understood. In turn, this would imply the need for coordination among the various levels of institutions and the integration of existing structures, so as to ensure that core local expertise was available, the approach in the United States of America, for example, and noted the planned national system of Indonesia. The United Nations Economic Commission for Europe (UNECE's) "PPP readiness assessment tool" could assist States in analysing their national systems, it was noted.

40. In summary, it was agreed that the above key attributes of a suitable institutional framework would support high standards of governance. It was considered that the reference sources and national experience provided to the Colloquium indicated that achieving consensus on legislative provision and supporting guidance would be relatively straightforward.

2. Cross-border PPPs (A/CN.9/819, paras. 53-56)

41. It was noted that cross-border projects (CBPPPs) were increasingly attractive and provided integrated networks such as transport corridors; they also enabled projects that were beyond the means of any one State. However, it was reported, they raised specific problems not addressed in the PFIPs Instruments – including different legal systems and multilateral agreements. It was considered that the lack of guidance at the international level on CBPPPs was a disincentive to many States from contemplating and engaging in CBPPPs.

42. Experience in CBPPPs and related joint projects involving more than one State was shared, which underscored the need for further work in the area. It was stated that no project under the "New Partnership for Africa's Development" (NEPAD) had been procured, and there had been transport sector failures in some joint projects in Austria and Hungary, and France and the United Kingdom. However, experience in the power and energy sectors had been more successful, including in Africa, South-East Asia, and Latin America.

43. It was agreed that a legislative text on PPPs should address the private law aspects of CBPPP. Three options, set out in paragraph 55 of A/CN.9/819, were considered. After discussion, it was agreed that the second option was preferable, which combined limited new legislative provision with guidance on how to use, adopt and adapt existing provisions in the PFIPs Instruments and at the national level.

44. The Colloquium agreed that achieving consensus on the solution would again be feasible.

3. Governance and social responsibility (A/CN.9/819, paras. 57-63)

45. It was noted that the questions of governance and social responsibility were not addressed as a discrete topic in the PFIPs Instruments, but that (as document A/CN.9/819 noted), they were critical to enabling social and economic development through PPPs. In this context, it was agreed a legislative text should require that the development goals being pursued through a PPP be transparent.

46. It was underscored that governance in the PPPs context was considerably more complex than corporate governance — the wide range of stakeholders, complex organizational structure, the social obligations (delivery of public service) and the long-term contract relationships would need to be considered and, where appropriate, integrated into a legislative text and associated guidance. Here, the notion of administrative responsibility arose in that public service needs should drive what would be considered to be socially responsible projects. Public sector comparators, value for money analyses and economic benefits and impact studies would be the key to conducting appropriate due diligence and ensuring both the integrity of the process and responsible public administration.

47. The key elements of checks and balances in the system were discussed, including roles and responsibilities and separating functions that would otherwise raise potential conflicts of interest. In addition, systems would need to encourage ethical behaviour and compliance with fiduciary duties. A PPP law could provide for ethics review boards, for example, as had been seen in one case studied. Tools would include whistle-blower protection, and conflict of interest provisions.

48. It was noted that these issues were an integral aspect of sustainability, the driving force behind the Rio+20 Declaration. The Colloquium's attention was drawn to an existing standard — ISO 26000 — that could serve as a useful point of departure for provisions in the PPPs context, and which would allow civil society input to be provided.

49. In addition, it was noted that best practices in a public authority should reflect some private sector commercial techniques, and the private party would need to observe some public service standards. At the practical level, experience showed that public authorities' lack of negotiating expertise, problems in renegotiating projects and allegations of collusion were undermining good governance and trust in PPPs. Public concern at projects developed for short-term political gain and related governance issues could, it was suggested, be addressed through widening public participation in the planning and monitoring of projects.

50. It was agreed that the issue could be seen to be critical in the selection of PPP projects, which should be done under the auspices of an infrastructure master plan rather than on a project-by-project basis (see, further, Section B.7 below). Opening the plan up to public scrutiny would be a simple and effective step, it was said. However, caution was urged against prescriptive legal provision in this context, which might undermine good governance. Here, the Colloquium's attention was drawn to a report by Chatham House — "Conflict and Coexistence in the Extractive Industry", which provided guidance on standards and approaches.

51. In summary, it was agreed that a future legislative text on governance should address:

(a) How to identify, articulate and evaluate public needs, social and other development goals;

(b) How to balance public and private sector needs;

(c) How to develop appropriate standards of conduct; and

(d) How to avoid the incorporation of myriad and conflicting policy goals into projects.

52. It was further agreed that the provisions should emphasize transparency, and draw on the experience discussed. In addition, it was noted that the recent report from the United Nations Secretary-General on "Globalization and its impact on the full enjoyment of all human rights" (A/Res/68/168) would provide assistance in incorporating standards of conduct into PPP projects, so that coming to consensus on the appropriate legislative provision and supporting guidance should again be feasible.

4. Funding and investment issues (A/CN.9/819, paras. 64-70)

53. The Colloquium heard that the traditional PFI funding method (which was based on 80-90 per cent debt to 10-20 per cent equity) assumed that the private party would take on most of the project risk. However, recent experience showed that public authorities were taking on many more risks, including on the level of demand for public services, on refinancing, and were guaranteeing income streams.

54. Weaknesses in existing models including, it was reported, permitting sales of debt and equity in the secondary market, had yielded windfall profits to selling investors and left projects unable to respond to the materialisation of operational risks.

55. These events implied, it was said, a fundamental shift in PPP structures. Additional models of PPPs to address the weaknesses and to accommodate changing funding methods were recommended for a new legislative text on PPPs. It was added that the existing PFIPs Instruments would pose obstacles to these additional models.

56. In addition, it was reported that transaction costs in PPPs relative to project value were increasing, through excessive bid and fee payments, to a level that was considered unsustainable (and exceeded budget provisions). Post-contract management and project running costs could be up to 10 per cent of the project cost according to the European Investment Bank.

57. On the other hand, reserves of funds potentially available for long-term investment — such as those from pension or superannuation funds — were not being made available to PPPs. The long-term investment time frame of these institutions and their long experience in such investments indicated that such funds should be made available to PPPs.

58. The results of studies and consultations into alternative funding models and their operation in practice were shared. The models included using pension fund investment in PPPs as a form of public ownership; using competitions to provide

debt or equity finance before procurement of the project itself (the Australian Inverted Bid Model, for example); governments arranging pooled debt (the Aggregator Model in the United Kingdom, for example); using competitions to select managers of project companies, again prior to the procurement of the project. As regards the contract management systems in this type of approach, non-profit distributing models, and models in which public authorities guaranteed an internal rate of return were noted. It was suggested that these models would both reduce transaction time and costs, and allow the public authority to maintain control of service delivery through inverting the traditional debt-equity ratio noted above.

59. While it was noted that the complexities of the PPPs process and contracts implied complex and more costly procedures, other participants considered that the additional costs generated in a PPPs project should be outweighed by the efficiencies in private sector delivery — and that this was one of the key policy justifications behind PPPs. Similarly, if the service provision and associated risks were not transferred to the private party, a key function of PPPs would be absent, and the projects might not be PPPs in the sense described in paragraph 19 above.

60. Taking into account the novelty of some of the models described, and the need to ensure a clear scope of work in its recommendation to the Commission, the Colloquium decided that the nature of the obstacles to emerging funding models should be studied further. On the assumption that such models could not be integrated into a legislative text on core PPPs, and given the importance of attracting appropriate long-term investments in infrastructure development and the provision of public services, further proposals to the Commission on how to legislate for them would be made at a future time. In the meantime, the proposed scope of work would be limited to core PPPs.

5. PPPs with small-scale operators (A/CN.9/819, paras. 71-76)

61. The Colloquium heard descriptions of such small-scale PPPs in Africa and Latin America. It was noted that there was no definition of "small-scale" per se, but that such projects were generally found at the local and regional level, and were generally of smaller scale and shorter duration than the traditional core PPPs described above. Small-scale PPPs were reported in waste and water services, tourism, public housing and other service sectors.

62. It was suggested that small-scale PPPs could be further divided into sub-sovereign-PPPs and micro-PPPs, and that the former would be easier to integrate into a general PPPs legislative and institutional framework. The experience of Morocco was cited in this regard. It was also noted that bundling of small-scale PPPs was both increasing the scale of the PPPs and making them more efficient.

63. Nonetheless, at the heart of such PPPs, as all PPPs, was the concept that the public and private sectors agreed to share in service provision and associated risk, using service contracts and concession mechanisms. PPPs with small-scale operators would require good and tailored governance structures, appropriate and efficient institutional support, legal certainty and good practice, but a simplified regulatory framework for procedures and contract forms would be necessary if transaction costs were not to be prohibitive. The need for innovative financial instruments, capacity development and expert guidance would be critical success factors, and the participation of civil society should be encouraged. The work of the

French Conseil d'Etat, in association with the Agence Française de Développement and the World Bank in establishing a community of practice was noted in this regard.

64. As regards financing, it was noted that public finance would need to be supplemented by bank lending and other project finance, using such institutions as development banks, micro-finance and other civil organizations and foundations. The extent to which such models could be integrated into a legislative text on core PPPs was questioned.

65. Furthermore, difficulties in addressing micro-finance in UNCITRAL in previous years were recalled, in part given the risk of such work duplicating that of other development bodies. Similarly, the Colloquium was urged to avoid making any recommendations that would duplicate the work UNCITRAL was currently undertaking in providing an enabling legal environment for MSMEs, though it was noted that this work was currently focussing on business formalization and was not intended to cover partnerships with the public sector.

66. The importance of facilitating PPPs with small private operators in any future legislative text on PPPs was emphasized, given their potential contribution to sustainable development. However, whether such PPPs could be integrated into the core PPPs that such a text would address was unclear: micro-enterprises might require a very simplified regime, but other SMEs might be able to operate in a system designed for core PPPs. Consequently, it was agreed that this question would be considered during the development of a text on PPPs, taking into account progress on a UNCITRAL's work on an enabling legal environment for MSMEs, the obstacles that a legislative text on core PPPs might pose to PPPs with small private operators, experience gained in the operation of such PPPs and other developments. Thereafter, future work on PPPs with small private operators might be recommended to the Commission.

6. Consistency between PPPs and other laws (A/CN.9/819, paras. 77-92)

67. Ensuring such consistency was recognized as critical for the success of PPP projects. The breadth of relevant laws was highlighted, many of which were addressed in the current Legislative Guide. Issues reported as required updating or additional provision included laws on the promotion and protection of investment, licensing issues, data protection and information disclosure, and emerging risk areas — such as political risk in both the developing and developed worlds.

68. The Colloquium recalled that the most effective solution to this type of issue would be in a comprehensive guide to support a future legislative text on PPPs.

69. The Colloquium also heard that the question of overlapping public procurement and concessions laws, and any future PPPs legislation, would need careful consideration not least as many States were addressing PPPs as part of work to modernize their procurement systems. Similarly, coordination with the approach of donor agencies such as the multilateral development banks would be of assistance to States, it was said.

70. The Colloquium noted that as the United Nations Convention Against Corruption (UNCAC) had come into force after the PFIPs Instruments were issued, two areas in particular should be integrated into a future legislative text on PPPs.

(a) Anti-corruption and integrity measures

71. First, a future legislative text on PPPs should be implement the requirements of article 9 ("Public procurement and management of public finances") and article 12 ("Private Sector") of UNCAC. Supporting provisions and guidance should also draw on the OECD Principles for Public Governance of PPPs, the UNECE's Guidebook on Promoting Good Governance in PPPs, and the UNCITRAL Model Law on Public Procurement, among others.

(b) Conflicts of interest

72. The complexity of conflicts of interest in PPPs was highlighted, noting the many stakeholders and contractual arrangements that such projects involved, complicated further by the fact that the parties might have different capacities in the different contracts involved, and therefore that colliding interests might emerge, particularly where disputes arose.

73. The lack of provision in the current PFIPs Instruments and other texts was also noted. It was agreed that a future legislative text should address the issues of both personal and organizational conflicts of interest, implementing articles 8 and 9(1)(e) of UNCAC in particular, to cover declarations of interest, screening procedures and training requirements, and contractual arrangements. In addition to the Model Law on Public Procurement, a future legislative text would also draw on the 2014 directive on concessions from the European Union.

74. It was agreed that the available source materials indicated that coming to consensus on the appropriate legislative provision and supporting guidance would again be feasible.

7. Project planning, including the allocation of risk and government support (A.CN.9/820, paras. 1-7)

75. It was recalled that although the PFIPs Instruments and other international texts on PPPs addressed project planning, the World Bank among others had considered this area a particular weakness, particularly as regards developing a pipeline of projects.

76. Key areas for development in a PPPs legislative text included: identification of public service needs and prioritization among them through establishing a master infrastructure plan, and ensuring a transparent budget framework at the macro level. At the micro level, and within the master plan, individual projects could be planned by reference to the business case, value for money, affordability, comparators of public procurement and PPPs using the public sector comparator and other mechanisms.

77. While transparency in the project pipeline was agreed to be vital in terms of encouraging bidder participation, it was agreed that plans for proposed projects should be reasonably advanced before being presented to the market. If commercial viability could not be demonstrated at that stage, it was said, the resultant procurement was unlikely to attract sufficient interest.

78. It was also agreed that this stage of a project cycle could be separated into two main phases: the first was to consider whether or not to use a PPP or to follow a traditional public procurement. This phase, it was added, should follow pre-set steps

and should be undertaken with all relevant institutions in the State concerned. The second phase was to prepare the project for presentation to the market, i.e. ensuring that the time frame and the funding approach were feasible.

79. The need for integration of the planning process with the institutional framework was highlighted, and hence it was considered that a future legislative text on PPPs should ascribe competence for the planning function and the key procedures to be followed.

80. It was also emphasized that the planning stage was critical to ensure that the long-term nature of PPPs projects was sufficiently taken into account, so that complex contracts, with clauses governing modifications, extension of scope of services to be provided and other terms could be set out in the bidding documents. The importance of ensuring that all relevant contract terms in public and administrative contracts were well-known and disseminated was also recalled. It was agreed that good planning and preparation would assist in decreasing the time and cost of the bidding process, would encourage bidding, and would enhance the quality of bids and resultant contracts.

81. It was agreed that master infrastructure plans should be published, but against an express provision to the effect that they did not create binding obligations or rights on the part of potential bidders (as was found in the Model Law on Public Procurement) — otherwise, there would be a disincentive to plan effectively. In addition, it was said, such transparency mechanisms might reduce the risk of inappropriate direct negotiation of projects and might assist in a better approach to unsolicited proposals (as to which, see Section B.12 below).

82. It was therefore agreed that a legislative text should address project planning and preparation, and would draw on the current PFIPs Instruments and other materials referred to above. It was noted that public procurement laws generally did not address the planning phase of projects, or indeed the need for master infrastructure plans. Accordingly, the guidance accompanying a future legislative text would need to encourage States to ensure that equivalent and coherent requirements applied to all infrastructure development and associated service provision in a State, irrespective of the funding mechanism for any particular project, both for good governance purposes and to avoid distorting decisions on funding for projects themselves.

83. Although implementation of provisions on planning and preparation was acknowledged to require significant capacity and support, it was agreed that the design of the legislative framework and guidance, drawing on the above sources and national experience, indicated that a consensual legislative solution would be feasible.

8. Risk allocation and government support (A.CN.9/820, paras. 8-14)

84. It was recalled that there was general agreement on the main principle underlying risk allocation in PPPs: the party most able to manage and mitigate a risk should bear that risk. However, this principle was noted to pose considerable difficulties in practice. While detailed feasibility studies might improve the understanding of risks, identifying, defining and measuring risks was difficult, and risks might vary throughout the life of a project.

85. Similarly, risks might not be in the full control of any party and might be perceived and characterized differently by different parties. For example, engineers and construction firms would have different notions of risk, timing and reward among themselves and as compared with financiers. Government guarantees might be necessary even for risks that were not fully in the relevant project authority's control.

86. In addition, it was observed that there might be cultural or institutional reluctance to accept the notion of payment for transfer of any risk to a private party, given that the public sector could self-insure by pooling risks. Furthermore, whether there could be genuine risk transfer for the provision of essential public services was questioned — the public authority would be required to ensure continuity of service.

87. From this perspective, it was suggested that risks and rewards (i.e. a reasonable profit level) should be considered together, so as to achieve an agreed equilibrium in the contract overall. Thereafter, the basic equilibrium of the project should be maintained by adjustment as circumstances might warrant. The basis of the provisions should be on managing risks in the longer-term, adapting the dispute prevention mechanisms existing in the Legislative Guide to address regular meetings, a partnering approach and rules for managing change.

88. In this regard, it was emphasized that good governance principles should apply equally to any changes to the project and associated agreements, and a process contract approach as applied in Australia, a quality of entry approach as applied in Norway, the gateway model applied in the United Kingdom could also serve as useful examples of good practices. In particular, they contained guidance on addressing the observed optimism bias in PPPs. Furthermore, it was said, enhancing long-term equity participation in projects, as discussed in the section on Funding and Investment issues above, could assist in ensuring that risk transfer remains effective throughout the life of the project.

89. It was agreed that these issues should be provided for in a legislative text on core PPPs as an integral part of the planning and preparation process, and that the source materials indicated that consensus on them would be feasible. Additional issues relevant to non-core PPPs only could be proposed to the Commission for separate future work.

9. Selection of the project partner (A.CN.9/820, paras. 15-20)

90. The Colloquium heard a summary of the detailed provisions in the PFIPs Instruments on selection procedures. It was also reported that traditional public procurement methods, which revolved around open tendering, were unsuitable for PPP projects. However, modern procurement laws, including the UNCITRAL Model Law on Public Procurement, were noted to contain more suitable procurement methods involving interactions between the public authority and potential bidders (discussions, dialogue and/or negotiation). It was also reported that the Model Law contained a method — Request for Proposals with Dialogue — that combined many features of the selection method in the PFIPs Instruments and the EU's Competitive Dialogue procedure and the procedural strictness of two-stage tendering (itself a well-tried and tested method used by the MDBs).

91. Nonetheless, it was observed that PPPs selection procedures would need to accommodate the disclosure of a broader set of terms and conditions of the project than a public procurement procedure, the probable need for negotiations with the selected project partner so as to conclude a contract, and the probability of post-contract changes in the operation phase.

92. It was recalled that contract negotiations were prohibited for governance reasons in the Model Law on Public Procurement. PPPs experience had shown that permitting parties to the transaction other than the project partner — such as financiers — had been cited as a reason for negotiations at this stage. It was agreed that parties that had not participated in the selection process should not be permitted to take part in such negotiations, precisely to avoid the risks to good governance that were the basis of the prohibition in the Model Law.

93. As regards changes in project terms, it was highlighted that modern procurement legislation might require a new procurement process should the changes be considered material. Thus, public procurement procedures would need some adaptation to PPPs.

94. The Colloquium heard details of the reforms being undertaken by the African Development Bank (AfDB) to modernize its procurement system, including as regards the procurement of complex infrastructure projects. Details of the basis of the Bank's procurement policies drawing from its constitution, the consultation process and timelines were provided. One of the expected results would be a stronger reliance on institutional frameworks so as to achieve the standards of governance and effectiveness discussed earlier in the Colloquium, it was said, and thus the reform programme would be considering many of the issues raised. From this perspective, too, the African Development Bank confirmed its support for an UNCITRAL legislative text on PPPs.

95. It was agreed that a harmonized approach to key principles and procedures between the MDBs and UNCITRAL was important. Many States that might use an UNCITRAL text on PPPs would also be borrower countries from those banks, and capacity would be eroded should officials need to work with widely divergent systems. It was agreed that achieving consensus on updating the selection method in the PFIPs Instruments, in the light of the above issues, would again be feasible.

10. Domestic preferences (A.CN.9/820, paras. 21-23)

96. The sensitivity of the topic was underscored, in that many systems (including those of the MDBs and regional agreements on free trade) prohibited such preferences as regards covered procurement. Nonetheless, when the Model Law on Public Procurement had been developed, extensive discussions with States and such bodies had led to a carefully-crafted solution in that text. In essence, such preferences were permitted subject to international obligations, and to rigorous transparency and governance safeguards. It was agreed that this approach should be followed in a legislative text on PPPs.

97. The complexities in the PPPs environment would, it was added, need to be factored in to a legislative text on PPPs. Notably, preferences and other socioeconomic programmes to support SMEs and other disadvantaged groups would probably apply only at the sub-contract level, and quantification of preferences in the context of qualitative evaluation criteria and service delivery obligations would

require further consultations and studies. The need to ensure appropriate qualifications from bidders subject to preferences was agreed to be critical at the practical level.

11. Review and challenge mechanisms (A.CN.9/820, paras. 24-27)

98. It was emphasized that a robust challenge mechanism would be vital to ensure effective participation in bidding for PPPs, and to implement the requirements of UNCAC article 9. It was agreed that the provisions in the Model Law on Public Procurement provided appropriate standards, and should apply to PPPs — for example by conferring competence as regards PPPs on the bodies that heard reviews and challenges in the public procurement context.

12. Unsolicited proposals (A/CN.9/820, paras. 28-34)

99. The extensive treatment of this controversial topic in the PFIPs Instruments, summarized in paras. 28-34 of document A/CN.9/820, was reviewed in detail. It was agreed that the essence of the approach should be maintained. It was reported that the experience of one country that had sought to legislate to permit unsolicited proposals had not been positive.

100. It was also reported that practice had showed considerable benefits from having a master infrastructure plan where unsolicited proposals were concerned. If all identified infrastructure needs were set out in that plan, it was said, there would be less reason for unsolicited proposals to be taken up. However, provisions on unsolicited proposals remained necessary because such master plans were in their infancy, and also to address unsolicited proposals that were in fact submitted. Although a private party might be able to identify a new public service need, potential service-providers were less likely to be able to quantify whether they were affordable and to demonstrate that the public sector or end-users should pay for the services concerned.

101. It was agreed that some updating to the provisions in the PFIPs Instruments would be necessary, but that the revisions would not be substantial.

13. Provisions in legislation or contract (A/CN.9/820, paras. 35-40)

102. The Colloquium agreed that potential benefits of regulating the contract terms could include simpler contract negotiations, reduced transaction costs, and better protection for the weaker party (normally the public authority, which would often have little experience in such projects). A major need was to ensure continuity of service provision. It was agreed that providing guidance on the terms of the project agreement was a key area for capacity-building that a PPP Unit should undertake.

103. The benefits of providing a set of suggested contents of the project agreement were agreed (as the PFIPs Instruments did), but that the extent to which legislation should set the terms themselves was acknowledged to be a much more sensitive issue.

104. On the one hand, standardizing terms and conditions, and other documents would reduce the need for specialists in negotiations and hence transaction costs and risks, and it was suggested that contract forms should be incorporated into the legislative framework.

105. On the other hand, representatives of the private sector had recommended full contractual freedom so as to ensure the project agreement was fully tailored to suit the project at hand. It was also suggested that tailoring indicative clauses in legislation would still mean that the content would vary significantly from case to case.

106. A significant aspect of the project agreement, it was observed, was provision for changes in the project. The notion of contract equilibrium raised earlier in the Colloquium was recalled — so that changes that would be inevitable in such a long-term contract would be possible and subject to appropriate compensation. This approach, it was suggested, would warrant the inclusion of core contract principles in the legislative framework.

107. After discussion, it was agreed that inclusion of certain contract terms in the legislative framework would be desirable, but the extent to which so doing would be feasible remained to be established. Thus this was one area in a legislative text on PPPs that would require significant additional work.

14. Post-award disputes (A/CN.9/820, paras. 41-51)

108. It was recalled that the consultants' surveys reported above, unlike those of the EBRD, had shown that compliance with the PFIPs Instruments on this subject was relatively weak.

109. The discussion on the topic set out in document A/CN.9/820 was considered in some depth. It was noted that a key issue for resolution was whether arbitration was a suitable mechanism for the resolution of disputes arising at this phase of the project cycle and, if so, how suitable forums could be identified. The AfDB reported on its assessment of arbitration centres in the African region, which had identified that arbitration centres in at least three countries as well as recognized international centres had the capacity to arbitrate AfDB-funded contract disputes. The importance of confidence in such centres was underscored, meaning that those without long track records would need support.

110. Other issues for additional provision included guidance on national as compared with international forums for dispute resolution, and ensuring independence of the forum (an issue that had proved difficult at the national level, e.g. when challenging decisions of regulators and public authorities).

111. The critical importance of dispute prevention was emphasized, addressed at length in the existing Legislative Guide. Additional aspects would include guidance on the crucial role of selecting the law to govern the project and the forum for disputes, how to address non-arbitral elements, and local capacity. In addition, allowing an opportunity for investors to comment on proposed regulations that would affect a project would be an important prevention mechanism, it was noted.

112. Further work was agreed to be necessary to provide appropriate mechanisms to prevent and manage disputes other than those between the public authority and the project partner. Those disputes could arise between shareholders, lending parties, operational consortium partners, regulators and operators and contractors and sub-contractors. At a practical level, experience had indicated that international arbitration tended to allow a free choice of forum, whereas one approach suggested for addressing the many and varied disputes that might arise would require some

steps to be exhausted before disputes could be brought before certain international forums.

113. In addition, some of the guidance in the Legislative Guide was considered overly theoretical, and a more practical approach would be helpful. It was agreed that the extensive experience in UNCITRAL in dispute prevention and resolution was such that agreeing legislative solutions on the outstanding issues would again be feasible.

15. Transparency and other issues (A/CN.9/820, paras. 52-59)

114. The principle of transparency was critical for good governance in all aspects and phases of PPPs, it was agreed, and underpinned systems and regulation at the national and international levels. A transparent process was noted to be a pre-requisite for encouraging participation and for allowing effective monitoring and evaluation of projects.

115. Transparency was considered to be a tool for achieving accountability rather than a goal itself, however, and in this regard the key features of PPPs indicated a complex situation. For example, moves to encourage routine publication of public contracts did not account for changes to the contract, how to publicise equity transfers in the project, or how to treat the different types of information that such a contract would contain. For example, the contract terms governing the provision of public services would warrant different treatment from those covering confidential information. Additionally, there was little national experience on how to provide the resources necessary for the public sector and civil society effectively to assess performance throughout and at the end of the project.

116. A further aspect of transparency in which developments in practice were evident was the accounting treatment of PPPs, it was added. Traditionally, it was noted, the off-balance-sheet nature of PPPs (meaning that they did not add to public debt burdens) was seen as a key motivating factor for using PPPs, but Canada and other States had moved to require contingent liabilities and capital formation in PPPs to be brought into national accounts. Accounting standards were being developed at the national and regional level, and transparent budgeting procedures were being encouraged at both levels — relevant experience in this area in several States, including the United States and in the European Union, was shared.

117. Key performance indicators would need to be crafted by reference to the socioeconomic objectives of projects, as well as their cost-effectiveness, it was added. A legislative framework should, it was said, require those objectives to be articulated and publicly-available. It was agreed that ensuring accountability through transparency and other tools throughout a PPP would be very important in the UNCITRAL context, particularly given the link between PPPs and sustainable development targets. Although there was much current material on many aspects of transparency, achieving consensus on all transparency requirements would involve some sensitive issues and hence substantial work in the development of a legislative text on PPPs.

118. It was noted that other topics in the PFIPs Instruments identified as in need of revision included the authority to engage in PPPs, security interests and some further aspects of accounting and financial issues. It was agreed that achieving consensus on these issues was expected to be straightforward.

16. Conclusions as regards scope of work to develop a legislative text on PPPs

119. The Colloquium recalled that in all the key topics identified for consideration in the development of a legislative text on PPPs, the surveys and experience shared at the Colloquium indicated that consensus on the necessary provisions was feasible without work to develop new concepts, and within a relatively short time frame. There were only two limited exceptions to this conclusion, it was noted — the extent to which provisions should be in legislation or contract, and transparency. While further work would be required on these topics, it was nonetheless expected that a consensual legislative development would be achievable thereafter.

120. In the light of these conclusions, and the fact that the scope that the Colloquium had agreed to recommend to the Commission for such work would be limited to core PPPs, the Colloquium concluded that the scope of work proposed to be undertaken was as well-defined as it reasonably could be before such a project commenced. It was noted, however, that any mandate for development of a legislative text on PPPs should be sufficiently flexible to allow for issues that emerged during the development to be addressed.

C. Nature of a future legislative text — Convention, Model Law, or Legislative Guide?

121. The Colloquium heard a summary of the above three variants of UNCITRAL legislative text. It recalled the Commission's general preference for legislative provisions (rather than pure guidance). It was agreed that a Convention would not be feasible in the PPPs context, and so the Colloquium considered the relative benefits of a Model Law and Legislative Guide. Some participants highlighted that assisting States in legislative development was easier and more effective with a template law as a point of departure rather than a policy guide.

122. It was noted that a Model Law, offering a template law containing the essential principles and procedures for a national law, required guidance on its enactment, implementation and use if it were to function as intended. There would be limited options in a Model Law, but explanations would be needed to allow States to select the most appropriate option for local circumstances. A Legislative Guide, on the other hand, combined policy guidance and suggestions for legislative provision, but did not seek to provide a framework law per se. From this perspective, it was agreed that there was a spectrum of approaches to UNCITRAL legislative texts from Model Law to Legislative Guide.

123. Concerns raised about the use of a Model Law in the PPPs context set out in paragraph 68 of document A/CN.9/820 were recalled, i.e. ensuring the selection procedure was designed for the PPPs context, the need for a robust planning framework and the need to tailor a Model Law to local circumstances and other aspects of the regulatory framework. In the light of the discussions at the Colloquium, it was agreed that these issues would not in fact render a Model Law unachievable, but that they highlighted the fact that a Model Law should be accompanied by a comprehensive guide to its enactment, use and implementation.

124. The appropriate form of text was further considered by reference to the varied needs of States with different levels understanding of and experience in PPPs, and at

different stages of legislative development. It was suggested that for the States with the lower levels of such experience and development, a Model Law would be the most useful form of legislative text from UNCITRAL. States with more experience with PPPs would be better able to work with a Legislative Guide, as it combined limited legislative provisions upon which there was international consensus and policy guidance on other legislative provisions to be included in a national law. Such States would also be better able to adapt and update a Legislative Guide as necessary. States with very significant experience and understanding of PPPs would also be able to include novel approaches to PPPs in their legislative framework.

125. In the light of this analysis, and bearing in mind the need to address the infrastructure funding gap that was most acute in developing countries with the least PPPs experience, it was decided that the most effective form of legislative text for PPPs would be a Model Law. The Colloquium therefore recommended that the Commission consider the development of a Model Law on PPPs, supported by a comprehensive guide to its enactment.

126. The Colloquium also heard details of a draft Model Law on PPPs being produced by the Parliamentary Assembly of the Commonwealth of Independent States, an interstate body comprising parliamentary delegations from its 9 member States. The three goals of the project were the harmonization of legal rules (with the same goals that underpin UNCITRAL's work); the modernization of those rules and the development and dissemination of best practices and standards. It was noted that the regional nature of the project, among States with similar legal, cultural and economic backgrounds, meant that building consensus was perhaps easier than it would be in the worldwide context of UNCITRAL. The next draft, was understood to take on many of the emerging issues discussed during the Colloquium and was based on research into PPPs practices as is UNCITRAL practice, and was expected to be available in May 2014. This Model Law, it was explained, would also be supported by policy and legislative guidance.

127. The Colloquium recalled that the scope of the Model Law on PPPs that it was recommending to the Commission was agreed. Although that scope indicated that UNCITRAL would be able to come to consensus on the text of a Model Law relatively quickly, it was emphasized that many States were seeking to enact PPPs laws in the very short-term, and so would need assistance and guidance before a Model Law would be available in final form. It was noted that preparatory material for sessions of a Working Group — such as proposals for legislative texts — were published on the UNCITRAL website in all official United Nations languages before those sessions themselves. This process, together with inclusive deliberations and consensus-building at the sessions that were features of UNCITRAL negotiations, were agreed to be critical to encouraging States at all levels of development to participate, to enhance their understanding of PPPs as the process went on, and thus to enable them to commence PPPs reform in anticipation of the Model Law becoming available. The importance of UNCITRAL's formal working methods in the PPPs context was therefore emphasized.

128. Nonetheless, it was recognized that consultations between formal sessions would be necessary to ensure that the text was developed at as early date as possible, and to allow issues to be discussed as widely as possible. The representative of the Caribbean Development Bank, and those from States in Latin America, emphasized that this approach would facilitate the inclusion of experience

from their regions. This approach would also allow necessary support for institutional reform to be addressed, in conjunction with the other agencies working to reform PPPs mentioned during the Colloquium, it was said.

V. Conclusions

129. The Colloquium reaffirmed the importance of enabling PPPs to address the infrastructure funding gap that was vital to developing countries in particular. Experience with sub-standard and failing PPPs, it was added, underscored the need for an effective legislative model for States to use to develop best practices and standards so as to allow the potential for PPPs to make enormous contributions to sustainable economic and social development to be realised

130. The Colloquium therefore recommended to the Commission that it provide a mandate for the development of a Model Law and accompanying Guide to Enactment on PPPs, as early as reasonably possible. It emphasized the benefits of undertaking such a project using UNCITRAL's formal working methods, and urged the Commission, taking into account the need to prioritize thematic areas of UNCITRAL's work, to explore all possibilities to facilitate legislative development on PPPs in this manner.